

NOTICE OF PROPOSED RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 1. DEPARTMENT OF HEALTH SERVICES
ADMINISTRATION

PREAMBLE

- 1. Sections Affected**

	<u>Rulemaking Action</u>
Article 4	
R9-1-411	Repeal
R9-1-412	Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 36-132(A)(1) and (A)(17), and 36-136(F)
Implementing statutes: A.R.S. §§ 36-405 and 36-406
- 3. A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 14 A.A.R. 2042, May 23, 2008
Notice of Rulemaking Docket Opening: 14 A.A.R. 2043, May 23, 2008
Notice of Proposed Rulemaking: (volume) A.A.R. (page), (date) (*in this issue*)
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

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	Office of Special Licensing
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5. An explanation of the rules, including the agency's reasons for initiating the rulemaking:

A.R.S. § 36-405 requires the Arizona Department of Health Services (Department) to adopt rules to establish minimum standards and requirements for the construction, modification, and licensure of health care institutions necessary to assure the public health, safety, and welfare.

A.R.S. § 36-406 requires the Department to review and authorizes the Department to approve plans and specifications for the construction of or modifications or additions to health care institutions regulated under A.R.S. Title 36, Chapter 4. A.R.S. § 36-421(A) requires an initial license application for a health care institution to include architectural plans and specifications, which are required to meet the minimum standards for licensure within the class or subclass of health care institution for which they are intended.

In R9-1-412, the Department incorporates by reference physical plant health and safety codes and standards. The Department does this in R9-1-412 so that the Department can refer to R9-1-412 in its different sets of licensure rules throughout 9 A.A.C. rather than including separate incorporations by reference in each set of licensure rules.

In R9-1-411, the Department explains why the codes and standards are included in 9 A.A.C. 1; alerts persons that they need to use the correct edition of the codes and standards; alerts persons that federal, other state, or local laws and rules may impose additional or more restrictive standards with which they must comply; establishes rules of construction for conflicts among the standards established in Title 9; excludes from applicability certain provisions in the codes and standards listed in R9-1-412; and provides deadlines for and administrative requirements related to correction of deficiencies in physical plants.

The purpose of this rulemaking is to clarify and update the requirements in 9 A.A.C. 1, Article 4 to reflect Department policy and practice requirements. In a separate, related rulemaking, the Department is amending R9-10-104, Approval of Architectural Plans and Specifications (also published in this issue). This proposed rulemaking amends 9 A.A.C. 1, Article 4 by:

- Repealing R9-1-411. In R9-1-411, subsections (A) and (B) are repealed because the content of these subsections is merely explanatory information that should not be in rule. In R9-1-411(C), the text establishing rules of construction for conflicts among the standards established in Title 9 is repealed because it is now contained in R9-1-412(C). In R9-1-411(D), the text excluding certain portions of the materials incorporated by reference in R9-1-412 is repealed because R9-1-412 already contains exclusions from the materials incorporated by reference. Also in R9-1-411(D), the text establishing deadlines for and administrative requirements related to correcting deficiencies in physical plants is repealed because it is now contained in a more appropriate location in R9-10-104 (see related rulemaking in this issue).
- Deleting NFPA 5000 from the 2006 *National Fire Codes* incorporated by reference in R9-1-412(A)(12). NFPA 5000 was added to the 2003 *National Fire Codes*, and was incorporated by reference in R9-1-412(A)(12) when the Department changed from the 2001 *National Fire Codes* to the 2006 *National Fire Codes* (rules effective February 2, 2008). The Department is deleting NFPA 5000 in this rulemaking for the following reasons:
 - NFPA 5000 represents a separate building code. R9-1-412(A)(1) incorporates by reference the 2006 *International Building Code* as the building code Arizona uses to regulate health care institutions. Having an additional building code, NFPA 5000, causes confusion for the regulated community.
 - The American Institute of Architects and Facilities Guidelines Institute, 2006 *Guidelines for Design and Construction of Health Care Facilities* (2006 AIA *Guidelines*), incorporated by reference in R9-1-412(A)(11), does not reference NFPA 5000.
 - The 2006 AIA *Guidelines* require compliance with the 2006 *International Plumbing Code*, while NFPA 5000 requires compliance with the outdated 2003 *Uniform Plumbing Code*.
 - NFPA 5000 allows a performance-based option for the design of buildings to replace codes and standards. This would result in an additional cost to the Department to hire consultants to evaluate proposals submitted under the performance-based option.
 - NFPA 5000 allows lay-in ceilings while the 2006 *International Building Code* requires solid gypsum-board drywall (GBDW) ceilings. Solid GBDW ceilings form a more effective barrier to limit transfer of smoke than lay-in ceilings.

- Adding R9-1-412(C), to establish rules of construction for conflicts among the standards established in Title 9 (subject matter previously covered in R9-1-411(C)).
- Adding R9-1-412(D), to state that where a conflict occurs between a physical plant health and safety standard established in A.A.C. Title 9 and a standard established by a local governmental agency, the Department may allow the local governmental agency's standard to take precedence when the local governmental agency's standard is more stringent than the standard established in Title 9.

The proposed rules conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Department did not review or rely on any study related to this rulemaking.

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

Annual cost/revenue changes are designated as minimal when less than \$5,000, moderate when between \$5,000 and \$50,000, and substantial when greater than \$50,000 in additional costs or revenues. Cost/revenue changes are listed as significant when meaningful or important, but not readily subject to quantification. The extent to which businesses or health care consumers are affected by this rulemaking may depend on many factors, such as the health care institution physical plant standards that are currently adopted by the local jurisdictions in which a business operates or a consumer receives health care; the type of health care institution; how a health care institution is modified; and the number of health care institutions a business owns, serves, or from which a consumer receives health care.

The Department will experience minimal costs to notify local jurisdictions of the new requirements. The Department anticipates deriving a minimal benefit from saving time spent coordinating and reconciling two different building and plumbing codes and standards. The

Department also anticipates deriving a significant benefit from not having to hire consultants to evaluate proposals submitted under the performance-based option for the design of buildings.

The Department anticipates that many local jurisdictions will derive a minimal-to-moderate benefit from the new rule because many local jurisdictions will, like the Department, save time spent coordinating and reconciling two different building and plumbing codes and standards.

The economic impact of the proposed rules on businesses that own health care institutions depends on what type of health care institutions a business owns, how many health care institutions a business owns, and whether a business is constructing a new health care institution or modifying an existing health care institution. The new requirements have the potential to result in cost savings for businesses that own health care institutions but also have the potential to result in increased costs. The net effect of the new requirements on a business that owns a health care institution may be a zero-to-substantial increase in revenue or a zero-to-substantial increase in costs.

The economic impact of the proposed rules on businesses that design, construct, or modify health care institutions depends on what types of health care institutions a business serves, how many health care institutions a business serves, and the type of services a business provides to health care institutions. The new requirements have the potential to result in cost savings for businesses that design, construct, or modify health care institutions but also have the potential to result in increased costs. The net effect of the new requirements on a business that designs, constructs, or modifies health care institutions may be a zero-to-substantial increase in revenue or a zero-to-substantial increase in costs.

Third-party payers may derive a significant benefit from new requirements that have the potential to result in savings for businesses that own health care institutions because the savings may be passed along to consumers in the form of lower health care costs and thereby lower third-party payer costs. However, third-party payers may experience higher costs as a result of the rulemaking. New requirements that have the potential to result in additional costs to businesses that own health care institutions may increase third-party payer costs if those costs are passed along to third-party payers in the form of higher health care costs to patients.

Consumers of health care services may experience significant savings from new requirements that have the potential to result in savings to businesses that own health care institutions because the savings may be passed along to consumers in the form of lower health care costs. New requirements that have the potential to result in additional costs to businesses that own health care institutions may increase consumer health care costs if those costs are passed along to consumers.

The rulemaking should have no direct impact on private and public employment in businesses, agencies, and political subdivisions of this state.

The Department does not have precise data on the number of health care institutions that are small businesses as defined in A.R.S. § 41-1001, but believes that, except hospitals, the majority are small businesses. Currently, the Department does not collect data on the number of employees or gross annual receipts for all the different types of health care institutions. The Department also does not collect data on the number of employees or gross annual receipts for the businesses that design, construct, or modify health care institutions in this state but believes that many are small businesses. The economic impact associated with complying with the rule is the same for small businesses as it is for large businesses.

The rulemaking should not increase or decrease state revenues.

The Department believes that the proposed rules reflect the least intrusive and least costly method of achieving the purpose of the rulemaking, which is protecting the public health, safety, and welfare by establishing minimum standards and requirements for the physical plants of health care institutions.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name:	Rohno Geppert Program Manager, Office of Special Licensing
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Telephone: (602) 542-1264
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E-mail: phillik@azdhs.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

The Department has scheduled the following oral proceeding:

Date: Monday, August 25, 2008
Time: 9:30 a.m.
Location: Arizona Department of Health Services
1740 W. Adams, Room 411
Phoenix, AZ 85007

Close of record: Monday, August 25, 2008, at 5:00 p.m.

Written comments on the proposed rulemaking or the preliminary economic, small business, and consumer impact summary may be submitted to either individual listed in items #4 and #9 until the close of record at 5:00 p.m. on Monday, August 25, 2008.

Individuals with a disability may request a reasonable accommodation by contacting Mark Gula at (602) 364-0989 or gulam@azdhs.gov. A request should be made as early as possible to allow time to arrange the accommodation.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

In R9-1-412, the Department incorporates by reference the following, with modifications:

R9-1-412(A)(1): International Code Council, *International Building Code* (2006)

R9-1-412(A)(2): International Code Council, *International Fuel Gas Code* (2006)

R9-1-412(A)(3): International Code Council, *International Mechanical Code* (2006)

R9-1-412(A)(4): International Code Council, *International Property Maintenance Code* (2006)

R9-1-412(A)(5): International Code Council, *International Fire Code* (2006)

R9-1-412(A)(6): International Code Council, *ICC Electrical Code—Administrative Provisions* (2006)

R9-1-412(A)(7): International Code Council, *International Energy Conservation Code* (2006)

R9-1-412(A)(8): International Code Council, *International Plumbing Code* (2006)

R9-1-412(A)(9): International Code Council, *International Private Sewage Disposal Code* (2006)

R9-1-412(A)(10): International Code Council/American National Standard, *Accessible and Usable Buildings and Facilities* (ICC/ANSI A117.1-2003)

R9-1-412(A)(11): American Institute of Architects and Facilities Guidelines Institute, *Guidelines for Design and Construction of Health Care Facilities* (2006)

R9-1-412(A)(12): National Fire Protection Association, *National Fire Codes* (2006), as updated by *National Fire Codes Supplement* (2006)

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES
CHAPTER 1. DEPARTMENT OF HEALTH SERVICES
ADMINISTRATION
ARTICLE 4. CODES AND STANDARDS REFERENCED

- R9-1-411. ~~Scope and Applicability~~ Repealed
- R9-1-412. Physical Plant Health and Safety Codes and Standards

ARTICLE 4. CODES AND STANDARDS REFERENCED

R9-1-411. Scope and Applicability Repealed

- A.** ~~Codes and standards referenced elsewhere in this Title are listed in this Article for convenience in making periodic revisions as new editions become available. Before applying referenced codes and standards, the effective date shown at the end of the applicable regulation within this Article should be checked and the Department or the Secretary of State contacted to assure that the proper edition of the applicable regulation is being utilized.~~
- B.** ~~Other jurisdictions — federal, county, city or other state agencies — may have applicable requirements which may be additional (such as local zoning ordinances, state and federal occupational safety and health standards) or more restrictive than the minimum requirements established by these rules and regulations (such as local building codes and county health standards).~~
- ~~It is the responsibility of the applicant or licensee, or his agent, to assure that he is in compliance with all such requirements.~~
- C.** ~~Where conflicts occur among the standards established in this Title, the following rules of construction shall apply:~~
- ~~1. Standards specified in the narrative portions of the regulations shall govern over the standards adopted by reference.~~
 - ~~2. If a conflict occurs among the standards adopted by reference, the more restrictive standard shall govern over the less restrictive.~~
- D.** ~~Provisions in the structural codes and standards listed in R9-1-412, relating to purpose, scope, enforcement, exceptions and other administrative matters shall be applied except that:~~
- ~~1. Provisions specifying penalties are excluded from the provisions adopted as regulations.~~
 - ~~2. Provisions relating to buildings, structures or facilities subject to licensure by the Department existing at the time an applicable code is adopted, or at the time an existing facility first becomes subject to such provisions, shall be administered in accordance with the following:~~
 - ~~a. Readily correctable deficiencies (those deficiencies posing a hazard which can be corrected to comply with a code adopted by reference within the period ending one year after the expiration of the institution's then existing license) shall be corrected as soon as practicable and before the expiration of the institution's then existing license or, if the Department determines additional time is needed, before the expiration of the next provisional license. The period of time for correction shall begin with the notification by the Department that a deficiency or~~

deficiencies exist as a result of a code adopted by reference and that the deficiency, or each such deficiency, is determined by the Department to pose a hazard to the welfare of patients or employees of the facility. Following such notice the licensee shall meet a reasonable timetable for correction fixed by the Department which shall specify the periods for:

- i. ~~Submission of a satisfactory written plan for correction of the deficiencies, if necessary.~~
- ii. ~~Submission of preliminary drawings, if necessary.~~
- iii. ~~Submission of working drawings, if necessary.~~
- iv. ~~Completion of the modification or construction.~~

- b. ~~Major deficiencies (those deficiencies posing a hazard which cannot be corrected to comply with a code adopted by reference within the maximum period allowable by subparagraph (2)(a)) shall be corrected within three years after being notified by the Department that a major deficiency or major deficiencies exist as a result of a code adopted by reference and that the deficiency or each such deficiency is determined by the Department to pose a hazard to the welfare of patients or employees of the facility. Following such notice the licensee shall meet a reasonable timetable for correction fixed by the Department. The time for completion of construction shall not exceed three years and shall specify the periods for:~~

- i. ~~Submission of a satisfactory written plan for correction of the deficiencies, if necessary.~~
- ii. ~~Submission of preliminary drawings, if necessary.~~
- iii. ~~Submission of working drawings, if necessary.~~
- iv. ~~Completion of the modification or construction.~~

- e. ~~If the plan for correction shows that the entire building in which major deficiencies exist will be replaced with a newly constructed building, the Department may allow up to two additional years for the completion of construction if it determines that maximum time period allowable under subparagraph (2)(b) is insufficient.~~

R9-1-412. Physical Plant Health and Safety Codes and Standards

A. No change

1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
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 - i. No change
 - j. No change
 - k. No change
 - l. No change
 - m. No change
 - n. No change
 - o. No change
 - p. No change
 - q. No change
 - r. No change
 - s. No change
 - t. No change
 - u. No change
2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
3. No change

- a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
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 - h. No change
4. No change
- a. No change
 - b. No change
 - c. No change
 - d. No change
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 - i. No change
 - j. No change
5. No change
- a. No change
 - b. No change
 - c. No change
 - d. No change
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 - h. No change
 - i. No change
 - j. No change
6. No change
- a. No change
 - b. No change
 - c. No change

- d. No change
- e. No change
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- g. No change
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- i. No change
- j. No change
- k. No change
- 7. No change
 - a. No change
 - b. No change
- 8. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
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 - f. No change
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 - h. No change
- 9. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
- 10. No change
- 11. No change
- 12. No change
 - a. NFPA 5000 is deleted;
 - ~~a-b.~~ No change
 - i. No change

- ii. No change
- iii. No change
- iv. No change
- v. No change
- vi. No change
- vii. No change
- viii. No change
- ix. No change
- x. No change
- xi. No change
- xii. No change
- xiii. No change
- xiv. No change
- xv. No change
- xvi. No change
- xvii. No change
- xviii. No change
- xix. No change

~~b-c.~~ No change

B. No change

C. Where a conflict occurs between or among the physical plant health and safety standards established in this Title, the following shall apply:

- 1. A standard specified in a rule takes precedence over a standard specified in a document incorporated by reference; and
- 2. If a conflict occurs between or among standards specified in documents incorporated by reference, the more restrictive standard takes precedence over the less restrictive standard.

D. Where a conflict occurs between a physical plant health and safety standard established in this Title and a standard established by a local governmental agency, the Department may allow the local governmental agency's standard to take precedence when the local governmental agency's standard is more stringent than the standard established in this Title.